



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

**TE/GE: EO Examinations
625 Fulton Street, Room 503
Brooklyn, NY 11201**

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

September 20, 2011

**Number: 201150033
Release Date: 12/16/2011**

UIL: 9999.98-00

LEGEND

**ORG – Organization name
XX – Date Address - address**

**Taxpayer Identification Number:
Person to Contact:
Identification Number:
Contact Telephone Number:**

**ORG
ADDRESS**

CERTIFIED MAIL

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated December 24, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective June 1, 20XX.

You have failed to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. You failed to respond to repeated reasonable requests to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by I.R.C. sections 6001 and 6033(a)(1).

Contributions to your organization are no longer deductible under IRC §170.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending May 31, 20XX and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to these courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosure:
Publication 892

Letter 3607(04-2002)
Catalog Number: 34198J



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
TEGE EO Examinations
1100 Commerce St., Mail Code 4900DAL
Dallas, TX 75242

April 7, 2011

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit A
Name of Taxpayer ORG EIN: EIN		Year/Period Ended May 30, 20XX

LEGEND

ORG - Organization name XX - Date State - state President - president
 Secretary - secretary Treasurer - treasurer CO-1 - 1ST COMPANY RA-1 & RA-2
 - 1ST & 2ND RA

ISSUE

1. Whether the tax-exempt status of ORG should be revoked based on the Organization's failure to respond to the Government's request to examine the books and records.
2. Whether the tax-exempt status of ORG should be revoked based on private benefit and inurement issues revealed through the Government's receipt of summoned bank documents.

BACKGROUND

ORG is recognized as a 501(c)(3) tax-exempt organization, and is a non-profit corporation under the laws of the State of State. According to its Articles of Incorporation, the primary purpose of the organization is "to otherwise assist and fund household help for the poor and needy in distress who cannot manage their households because of their personal and family problems". The Officers of ORG include President, President, Secretary, Secretary, and Treasurer, Treasurer. In its history, the Organization filed Forms 990-N (e-Postcard) for tax periods ending May 30, 20XX, May 30, 20XX and May 30, 20XX. Tax year ending May 30, 20XX was the year under examination.

FACTS

ISSUE # 1

We are proposing revocation of the Organization's exempt status based on the following facts:

The Organization failed to respond to the following requests to examine the books and records:

- **2/17/20XX** – Examination letter, IDR # 1, Publication 1, sample Power of Attorney, and Governance Questionnaire sent via regular mail to the Organization's on-file address. The Organization did not respond to this mailing as requested.
- **3/5/20XX** – Cover letter, Examination letter, IDR # 1, Publication 1, sample Power of Attorney and Governance Questionnaire sent via Certified Mail to the Organization's on-file address. The Government received the returned package back stamped "unclaimed".
- **4/1/20XX** - Cover letter, Examination letter, IDR # 1, Publication 1, sample Power of Attorney and Governance Questionnaire sent via Certified Mail to the President's home address. The Government received the returned package back stamped "unclaimed".

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit A
Name of Taxpayer ORG EIN: EIN		Year/Period Ended May 30, 20XX

- **6/17/20XX** – IDR # 2 requesting a listing of all of the Organization's foreign and domestic bank accounts sent via Certified Mail to the on-file address. The Government received the returned package back stamped "unclaimed".
- **2/3/20XX** – Noticee copy of summons issued to CO-1 sent via Certified Mail to the on-file address. The Government received the signed return receipt, which indicated that the Organization's President, President received the package at the same on-file address utilized in the past.

The Agent submitted Postal Tracers to the United States Post Office to verify that the addresses utilized were current. The tracers revealed that the addresses used in the above-mentioned contact attempts, were current and correct as both the Organization and the Officer were receiving mail at these addresses on 11/16/20XX. Neither address consisted of a Post Office Box.

ISSUE # 2

We are proposing revocation of the Organization's exempt status based on the following facts:

Bank documents secured via summons revealed that the majority of the total charitable funds distributed by the Organization (81%) went to an individual, RA-1 aka RA-1. In addition, 9% of the funds distributed by the Organization went to the President, President and Treasurer who we presume to be a relative.

LAW

ISSUE # 1

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law. IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit A
Name of Taxpayer ORG EIN: EIN		Year/Period Ended May 30, 20XX

Treas. Reg § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

7602(a) AUTHORITY TO SUMMON, ETC.--

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized--

7602(a)(1) To examine any books, papers, records, or other data, which may be relevant or material to such inquiry.

In accordance with the above-cited provisions of the Code and regulations, organizations recognized as exempt from federal income tax must meet certain operational and reporting requirements. The above requirements relate to the retention of records sufficient to determine whether the organization is operated for the purposes for which it was granted tax-exempt status, and its obligation to submit to the examination of such records for verification purposes.

ISSUE # 2

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit A
Name of Taxpayer ORG EIN: EIN		Year/Period Ended May 30, 20XX

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. Better Bus. Bureau v. United States, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); Am. Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989); see also Old Dominion Box Co., Inc. v. United States, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) ("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. Am. Campaign Acad. v. Commissioner, supra at 1065-1066, and John Marshall Law School v. United States, 228 Ct. Cl. 902 (1981).

In accordance with the above-cited provisions of the Code and regulations, organizations recognized as exempt from federal income tax must meet certain operational and reporting requirements. The above requirements relate to the operation of public charities for 501(c)(3) purposes in the public interest.

GOVERNMENT'S POSITION

ISSUE # 1

We propose revocation of the Organization's exempt status based on the Organization's refusal to respond to multiple requests to examine the books and records. The Government attempted contact on five separate occasions. While Postal Tracers issued by the United States Post Office confirmed that the on-file addresses of both the Organization and the President were correct, nearly all attempts at sending Certified Mail to the Organization and President were unsuccessful as the Government received three of the four Certified Mail packages back stamped "unclaimed".

The final Certified Mail package, which consisted of the Noticee copy of the summons issued to CO-1 to obtain the bank records, constituted the only Certified Mail piece for which the Government received a signed receipt. The Government's receipt of the signed acknowledgement confirmed that previous mailings to the on-file address of the Organization were in fact, sent to the correct address. The return of the previous "unclaimed" mailings to the Government indicated that the President had refused to claim them.

ISSUE # 2

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit A
Name of Taxpayer ORG EIN: EIN		Year/Period Ended May 30, 20XX

We propose revocation of the Organization's exempt status based on **private benefit and inurement** revealed through the receipt of summoned bank documents. The bank documents evidenced that the Organization primarily operated for private rather than public purposes.

FIG. 1.0 CHECKING ACCOUNT ACTIVITY

The following table (Fig. 1.0) details the Organization's checking account activity from June 1, 20XX through May 30, 20XX. The average monthly balance in the account was only \$. For the entire period, as the Organization deposited its charitable contributions, it promptly distributed the income in a series of payments primarily to one individual.

Fig. 1.0

TABLE DELETED

FIG. 2.0 CHECKS ISSUED FROM 6/1/20XX – 5/30/20XX

The following table (Fig. 2.0) details the Organization's total expenses from June 1, 20XX through May 30, 20XX. The Organization distributed the majority of its income for the year to one individual. The checks identified the payee as RA-1, while the signatures on the check backs reflected the name of the depositor as RA-1. The President, President, issued check # on November 13, 20XX, payable to himself for \$. On January 8, 20XX, the President issued check # payable to Treasurer for \$. Due to the Organization's failure to respond to the Examiner, the Government presumes Treasurer to be a relative of the President, President. In addition, the President issued checks to two other individuals, the payments of which totaled \$. Congregation CO-2 appears to be a church.

Fig. 2.0

TABLE DELETED

The Organization utilized 2% of its total income from charitable contributions for exempt purposes, through its contribution to what appears to be a church. The Government was unable to question the reasons behind the issuance of checks to the individuals due to the taxpayer's refusal to respond to the Examiner. It appears that more than an insubstantial part of the Organization's activities was not in furtherance of exempt purposes, and did not primarily serve a public interest as required for exemption under IRC section 501(c)(3).

CONCLUSION:

It is the Government's position that the Organization is no longer eligible for exemption from federal income tax under IRC § 501(c)(3) due to its failure to respond to the Examiner's multiple requests to examine its books and records, and due to its failure to serve public rather than private interests.

Accordingly, the organization's exempt status is revoked effective June 1, 20XX.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit A
Name of Taxpayer ORG EIN: EIN		Year/Period Ended May 30, 20XX

In the year under review, the Organization's income did not include grants or income from any source other than charitable contributions, which would negate the requirement for the Organization to file converted Forms 1120.